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December 20th, 2002

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

RE: Ex Parte Presentation in a Non-Restricted Proceeding ---Appropriate
Framework for Broadband Access to the Internet over Wireline Facilities (CC Dkt.
No. 02-33)

**Response to Commissioner Kevin Martin's Speech at the FCBA,
December 10th, 2002**

To Read Commissioner Martin's Speech See:
<http://www.newnetworks.com/martinfcbaspeech.htm>



Dear Commissioner Martin,

You wrote:

"I must give Tom Tauke of Verizon credit for this policy construct. About a year and a half ago, shortly after I joined the Commission, I heard Tom give a speech where he laid out the concept of "new rules for new wires."

In virtually all of their states, Verizon (NYNEX and Bell Atlantic) promised to roll out a fiber-optic service in exchange for financial incentives. They got the changes in law but kept the money and never rolled out any of the fiber-optic plans quoted below, even though customers and competitors have been paying for it in the form of more expensive phone rates.

Verizon, Pennsylvania, Penn PUC Investigation, 2002.

"Verizon PA has committed to making **20%** of its access lines in each of rural, suburban, and urban rate centers broadband capable within five days from the customer request date by **end of year 1998; 50% by 2004;** and 100% by 2015."ⁱⁱ

"In view of Bell's **commitment to providing 45 Mbps** for digital video transmission both upstream and downstream, we look forward to Bell's providing this two-way digital video transmission at **45 Mbps.**"ⁱⁱⁱ

New York Public Service Commission, 1997 (Opinion 97-14, page 10)

"We adopted New York Telephone's position and used, as an input, **100% fiber (optic) feeder.** In doing so, we ...acknowledged the "incontrovertible evidence" that New York Telephone contemplated installing a broadband system and that fiber and associated equipment were needed for that system." (A feeder is the endpoint of the network that connects multiple homes, offices, etc.)

NYNEX 1993 Annual Report

"We're prepared to install between 1.5 and 2 million fiber-optic lines through 1996 to begin building our portion of the Information Superhighway."

Bell Atlantic 1993 Annual Report

"We expect Bell Atlantic's full-service networks (capable of interactive, multi-media communications, entertainment and



information), will be ready to serve 8.75 million homes by the end of the year 2000.

NYNEX Massachusetts

(Testimony from Alternate Regulation 94-50)

"(In Massachusetts, NYNEX will) deploy a fiber-based broadband network, with initial deployment to approximately 330,000 access lines, by year-end 1995."

NYNEX Massachusetts

"NYNEX plans to spend nearly half a billion dollars for 330,000 lines in Massachusetts." (Source: NYNEX/New England Chair Paul C. O'Brien speech; Transcript, 7/15/94)

New Jersey Public Advocate about NJ Bell Atlantic, (4/97)

"...low income and residential customers have paid for the fiber-optic lines every month but have not yet benefited."

"Bell Atlantic-New Jersey (BA-NJ) has over-earned, underspent and inequitably deployed advanced telecommunications technology to business customers, while largely neglecting schools and libraries, low-income and residential ratepayers and consumers in Urban Enterprise Zones as well as urban and rural areas."

Bay Ridge Courier-Life, Week of August 27th, 2001

"Copper is just as good as fiber," says Verizon spokesperson.

"There is nothing fiber can do that copper can't. It's preposterous."

"No. It's not the goal to go completely fiber" Verizon spokesperson says. "There's not enough money to refit the entire network, and there never will be."

Communications Workers of America, August 29th, 2002

"Verizon does not supply enough clean copper pairs to enable technicians to properly install new customer lines or replace defective pairs on existing customer lines. Instead, Verizon utilizes a "short term" technological fix called an AML or DAMLs." AML/DAMLs cannot support DSL service. Also, competitors seeking to provide DSL to Verizon's voice customers via line sharing cannot do so where an AML/DAML exists on a customer's loop. Use of these temporary fixes therefore interferes with CLEC efforts to compete with Verizon in the DSL market."



In your recent speech at the FCBA, you make statements that clearly demonstrate that you have a genuine interest in delivering broadband to the public. However, it is also clear that you have been deceived by Verizon and the other local monopolies' hype, who have essentially lied to the American Public about their broadband deployments in the past.

You base much of your presentation on the Verizon spokesperson Tom Tauke ideas.

"I must give Tom Tauke of Verizon credit for this policy construct. About a year and a half ago, shortly after I joined the Commission, I heard Tom give a speech where he laid out the concept of "new rules for new wires."

Ask yourself this – What proof do you have the Bell companies will deliver anything once you grant them these new regulations? There is plenty of evidence from numerous sources that your analysis is based purely on fantasy – Bell hype, and has nothing to do with any history.

The FCC currently has 6 broadband proposals to change the current rules and your own proposed rule changes will reregulate competition by blocking/closing down the basic tenets of competitors' rights to having access to the Bells' networks, thus seriously limiting customers' choices, not to mention the harm to the economy.

In fact, the documentation tells a completely different story --- We will demonstrate that Verizon and the other Bell companies already received massive, documented financial incentives for broadband networks they never delivered in the majority of states, that the ISPs and competitors will be put out of business if your proposals goes through and that the prices to competitors (known as TELRIC) have all been inflated because of a fiber-optic future that was never delivered.

Your speech is called "At the Crossroads". It should be called "How the Bells Snookered the FCC". What you have proposed is the death-knell for competition. It will not speed the deployment of broadband and you will be imposing a Customer-Takings tax on the networks, since it has been the customers, not the Bell companies, who paid for networks you want to give the Bells as private property.

There's a great deal of data that shows that the Bells promised a fiber-optic future a decade ago and never delivered.



Let's present the facts:

The Broadband Bait and Switch

There's ample proof that Verizon lied to the public about their broadband plans. Verizon was supposed to deliver almost 11 million households with fiber-based networks by 2000.

NYNEX 1993 Annual Report

"We're prepared to install between 1.5 and 2 million fiber-optic lines through 1996 to begin building our portion of the Information Superhighway."

Bell Atlantic 1993 Annual Report

"We expect Bell Atlantic's full-service networks (capable of interactive, multi-media communications, entertainment and information), will be ready to serve 8.75 million homes by the end of the year 2000."

As we will see, these numbers were reflecting rollouts that were supposed to be on a state-by-state basis.

Unfortunately, the FCC's own reports on Advanced networks are so flawed that they never mentioned what was going on in the states – which is where the bulk of monies has been collected – or should we say "taken" from customers.

New Networks Institute has pointed this fact out numerous times in our FCC Comments about Broadband, including our 1998, 1999, 2001 and 2002 filings. See: http://www.newnetworks.com/NNI_FCC_9-98.txt

More to the point, you want the "fiber-to the home" services, if they ever get deployed, to be owned by the Bell companies. You wrote:

"Under these proposals, "fiber to the home" facilities would be relieved from unbundling requirements and incumbents would be relieved of any obligation to deploy copper facilities in new build situations where fiber to the home is deployed."

Let's put facts on the table about what happened in the various Verizon states and show how you've bought the Verizon baloney hook, dialtone-line and sinker.



The Pennsylvania Bait and Switch.

Take the CURRENT case, now under discussion, of Bell of Pennsylvania, Verizon. In that state the Bell made commitments to deliver a fiber-based service that would be two-directional, capable of speeds of 45 Mps. By 2004, half of the state was supposed to be re-wired, both rural and urban areas, replacing the 75 year old copier wiring with fiber-to-the-curb. The Pennsylvania Public Utility Commission is actually holding them accountable. (Taken directly from the Penn. PUC's ORDER Re: Verizon Pennsylvania, Inc., Petition and Plan for Alternative Form of Regulation Under Chapter 30 P-00930715 2000 Biennial Update to Network Modernization Plan)

"In view of Bell's **commitment to providing 45 Mbps** for digital video transmission both upstream and downstream, we look forward to Bell's providing this two-way digital video transmission at **45 Mbps**."ⁱⁱⁱ

"Verizon PA has committed to making **20%** of its access lines in each of rural, suburban, and urban rate centers broadband capable within five days from the customer request date by **end of year 1998; 50% by 2004;** and 100% by 2015."

"In order to meet this commitment, Bell plans to deploy a broadband network using **fiber optic** or other comparable technology that is capable of supporting services requiring bandwidth of at least 45 megabits per second or its equivalent."

And it should be made clear that Verizon PA's deployment of this network was NOT the copper-based DSL.

"It is apparent that **DSL, as it currently exists today, (March 2002), is unable to provide the broadband availability of 45 Mbps both upstream** and downstream that the Company voluntarily committed to and the Commission approved in 1995."

New Networks Institute will be filing with the Pennsylvania commission next week. Our primary findings:

- Verizon Pennsylvania customers paid approximately \$785 per household for a network they never received. Verizon made an \$2.1 billion in customer overcharging,



- Verizon took an additional \$1.4 billion in tax write-offs – improper write-offs that were supposed to be taken for replacing of the copper wiring.
- Verizon funded their own DSL deployment through customer-funded rates, NOT shareholder monies.

Under your scenario, Verizon ends up with no obligations for ripping off customers, and you also block any competitor from using lines that were already funded by customers.

Since customers paid for these networks, not Verizon's shareholders, you are essentially dramatically limiting customers' choices and forgetting that these companies are still Utilities, and the wire into the home still has common carrier obligations --- even if it is upgraded to fiber--- which was the plan for the last decade in this state.

And your plan will surely make every Competitive company go bankrupt fast, their stock crashing, and their hopes for growth at 0%. Why will investors support any company where the next generation of their products is prohibited by law? As customers switch to the new networks, where is the growth of the ISP and CLEC going to come from? You are relegating the entire industry to a death sentence of a shrinking customer base and limited growth potentials.

The fiber wire is NOT an “information” service. You also make a serious flaw in logic. You have blurred together an essential distinction. In your discussion, you believe that DSL is an information service. While we do not agree with this analysis. However, it is clearly not true that the fiber-optic wiring is an information service. It is a “conduit” where companies can put their own electronics and use it for their own information service. The service is carried on the wire, the service is not the wire. This distinction restricts all new applications over any new fiber-based wiring the Bells do --- and it is ludicrous.

You also speak of the current impact on the manufacturing markets:

“As more manufacturers flounder, we risk being left with too few domestic providers of critical infrastructure for advanced services.”

You do not understand the history ---- It is clear that this failed broadband campaign, which occurred state-by-state, affected our entire Tech sector and was one of the reasons for the Telecom Crash and harm to the economy.

Case in point, as late as 1996, Bell Atlantic was making arrangements with other companies, such as Lucent, Corning and many other firms to deploy a full-service, very high speed, fiber-based services to customers. In a press release



by Bell Atlantic, July 1996, dedicated to their "six-and-one-half-year period" agreement with Lucent Technologies, the Bell laid out their plan to deliver 'fiber-to-the-curb' --- meaning the wiring of homes. This contract for fiber-optic broadband was supposed to extend to January 2003.

"Later this year, Bell Atlantic will begin installing fiber-optic facilities and electronics to replace the predominantly copper cables between its telephone switching offices and customers.... The company plans to add digital video broadcast capabilities to this "fiber-to-the-curb," switched broadband network by the third quarter of 1997, and broadband Internet access, data communications and interactive multimedia capabilities in late 1997 or early 1998."

In fact, the Bell Atlantic region would be wired.

"Bell Atlantic plans to begin its network upgrade in Philadelphia and southeastern Pennsylvania later this year. The company plans to expand this Full Service Network deployment to other key markets over the next three years. Ultimately, Bell Atlantic expects to serve most of the 12 million homes and small businesses across the mid-Atlantic region with switched broadband networks."

How do you suppose it affected the Lucent and the other companies who were designing for a fiber-optic based future? Since the designs for new products takes years, not months, it is clear that when the orders didn't show up, ALL of the companies betting on the fiber-optic future, from Lucent to Corning or JDS Uniphase, were left out in the cold. America now has millions of miles of fiber, but only a small percentage is in use, "Lit". That's because the Bell companies never built the on and off ramps so all we have is a highway with no exits.

To read a report on this topic see:

<http://www.newnetworks.com/fiberopitcfiasco.htm>

Other states have had the same smoke-screen about Verizon's Broadband deployments.



The New York Scam

New Networks Institute recently made a presentation to the New York City Council titled "The Two Broadbands... How NYC Got Conned and What We Should Do for The City's Broadband and Economic Health". The information below is taken from that report, which supplies more details. See:

<http://www.newnetworks.com/NYCspeechfin.htm>

The New York State discussions on a fiber-optic future started over a decade ago. Don't laugh, but in 1991, NYNEX gave the New York Public Service Commission a report titled, "The Network of Tomorrow: Guidelines for Fiber Deployment in the Loop," that outlined how they were going to rewire the entire state with fiber-optic 'feeders'. (A "Feeder" is the connection that centralizes all of the local phonelines from a few city blocks, or for an apartment building.) Though this report was not made public, there is "incontrovertible evidence" that New York Telephone discussed installing a broadband system and that fiber and associated equipment were needed for that system.

The next two quotes bring up serious issues that affect every New Yorker. Written by the NY Public Service Commission, it states that the NYNEX plan was to upgrade to 100% fiber in the network. It also states that using this premise, the costs for services to ALL competitors would be based on this upgraded, more expensive network. (From NYPSC 97-14, page 10, CASES 95-C-0657, 94-C-0095, and 91-C-14)

("TELRIC" is the price of the phone networks to competitors.)

"...New York Telephone, in contrast, contemplated all-fiber feeder. To state the argument in general terms, New York Telephone's adversaries contended that a more costly fiber technology was being installed to support New York Telephone's broadband system, which requires the use of fiber rather than copper, and that purchasers of narrowband network elements should not be required to bear its costs. New York Telephone, for its part, contended that fiber had become the technology of choice even for a narrowband, voice-only system and that a forward-looking construct (of the sort required by a TELRIC analysis) would use fiber even to determine the costs of narrowband.

The case in New York shows that the prices to competitors in New York were set by a 100% fiber-optic world, and so ALL competitors and customers paid for network upgrades that were never done.



“We adopted New York Telephone’s position and used, as an input, 100% fiber feeder. In doing so, we noted that this had been among the most highly contested issues in the proceeding and acknowledged the “incontrovertible evidence”¹ that New York Telephone contemplated installing a broadband system and that fiber and associated equipment were needed for that system. We went on, however, to distinguish between that statement and the conclusion that New York Telephone was installing fiber solely or even primarily for the purpose of advancing its broadband plans.”

In your analysis you want to give the competitors higher prices to essentially pay for upgrades, but as the above quote shows, the TELRIC pricing has been nothing but a scam because it added fees to competitors that increased the Bells investment – even though they never had to fulfill any of their stated plans. You wrote:

“In my view, the TELRIC pricing formula provides incumbent service providers with an insufficient return on investment capital for new infrastructure.”

What happened in New York was the same as Pennsylvania – Promise them anything to get changes in the law. Today, Verizon has gone back to 100 year old copper wiring as its mainstay for the wiring to customers’ homes. Verizon states:

Bay Ridge Courier-Life, Week of August 27th, 2001

“Copper is just as good as fiber,” says Verizon spokesperson.

“There is nothing fiber can do that copper can’t. It’s preposterous.”

“No. It’s not the goal to go completely fiber” Verizon spokesperson says. “There’s not enough money to refit the entire network, and there never will be.”

But the darker side to all of this is that Verizon has simply decided to squeeze the profits from the local customers. A recent report from the Communications Workers of America about the current condition of the Verizon New York networks clearly shows that Verizon has a take-the-money-and-run attitude and instead of doing proper repairs, they are instead doing band-aid fixes that can not support even DSL.

Communications Workers of America, August 29th, 2002

“Verizon does not supply enough clean copper pairs to enable technicians to properly install new customer lines or replace defective pairs on existing customer lines. Instead, Verizon utilizes



a "short term" technological fix called an AML or DAMLs." AML/DAMLs cannot support DSL service. Also, competitors seeking to provide DSL to Verizon's voice customers via line sharing cannot do so where an AML/DAML exists on a customer's loop. Use of these temporary fixes therefore interferes with CLEC efforts to compete with Verizon in the DSL market."

In fact, Verizon and the other Bells have been misleading you – They cut 100,000 staffers in the last two years, dropped their construction 50% since last year, have had increases in their profits from local service, the number of "Line Equivalents" is going up, not down, their debt was caused not because of the network expenditures, but to fund their wireless and overseas losses and they've been using the local phone networks as collateral.

Probably the most disturbing part of all of this is that the top 6 Verizon executives got \$194 million in the last three years for salaries, and their stock options for this period was valued at \$400 million –\$1 billion dollars.

Our documentation? New Networks Institute has written a series of reports on Revenues, Profits, Executive Compensation and Overseas investments. The information comes directly from the Bell companies' own annual and quarterly reports. The FCC should look at these sometime instead of just taking the word of the Bell companies that they are hurting financially.

<http://www.newnetworks.com/profitreport2002.htm>

You also suggest that there be an adjustment of the speed of writing-off these older networks for new investment.

"We also need to adjust the depreciation schedules within the TELRIC formula to more adequately account for new investment. I believe that greater flexibility in depreciation time frames will provide a greater economic incentive for service providers to invest in and deploy new network infrastructure."

It's a shame you didn't read our IRS filings from 1998 and 2000 against the Bell companies for excessive depreciation of the copper plant. The Bell companies actually wrote-off \$21 billion dollars in excessive deductions from 1993-1995 claiming that they were replacing the old-copper wiring with new fiber optics, and then never replaced it but took the deductions--- which saved them over \$7 billion in taxes. See: <http://www.newnetworks.com/irsrelease.html>

You also should examine the impacts on prices based on the missing equipment that was found in the FCC audits of the Continuing Property Records. According



to numerous sources, the FCC audits should have been continued because the original audits, which found \$19 billion dollars of missing or unverifiable equipment was never completed and dropped in the lap of the state commissions. The fact that only ¼ of the audits were done and these were the least problematic areas, clearly showed that the violations by the Bells for their record keeping and missing equipment affected not only phone rates, but also were IRS, FCC, SEC, violations that should have been properly dealt with, not simply abandoned.

The New York Public Service Commission's Report in 2001 found \$633 million in missing equipment and that was only ¼ of the audit. New Networks Institute and Teletruth have filed Complaints in New York, New Jersey, Massachusetts, and with the IRS and the SEC. To read our New York Complaint with links to the other materials see: <http://www.newnetworks.com/fccauditcomplaintny.html>

New Jersey and Massachusetts

As we stated earlier, the same Broadband scam happened in virtually every state. Case in point: New Jersey and Massachusetts. In both of these states, the Bell company made promises to the public about the deployment of a fiber-based network. And in both cases, after the state granted Regulatory freedom and new financial incentives, the Bell simply never fulfilled its obligations.

NYNEX Massachusetts

(Testimony from Alternate Regulation 94-50)

"(In Massachusetts, NYNEX will) deploy a fiber-based broadband network, with initial deployment to approximately 330,000 access lines, by year-end 1995."

NYNEX Massachusetts

"NYNEX plans to spend nearly half a billion dollars for 330,000 lines in Massachusetts." (Source: NYNEX/New England Chair Paul C. O'Brien speech; Transcript, 7/15/94)

In 1999, New Networks Institute filed a Complaint with the Massachusetts, Department of Telecommunications and Energy (DTE) because our analysis showed that instead of spending the money to build the networks that Verizon had stated they would build, they simply made an extra billion dollars in extra profits, and an additional \$800 million in tax deductions.

To read our Complaint see:

<http://newnetworks.com/Masscomplaint.html>



New Jersey was no different. The Ratepayer Advocate wrote:

New Jersey Public Advocate about NJ Bell Atlantic, (4/97)

"...low income and residential customers have paid for the fiber-optic lines every month but have not yet benefited."

"Bell Atlantic-New Jersey (BA-NJ) has over-earned, underspent and inequitably deployed advanced telecommunications technology to business customers, while largely neglecting schools and libraries, low-income and residential ratepayers and consumers in Urban Enterprise Zones as well as urban and rural areas."

To read the Ratepayer Advocates Report on this topic see:

<http://www.rpa.state.nj.us/onj.htm>

Other States, Identical Scams

The broadband scam wasn't just a Verizon problem. It happened in virtually every state in the US. To read a full report on this scam see: "How the Bells Stole America's Digital Future", published by Net Action, April 2000.

<http://www.netaction.org/broadband/bells/>

A timeline of Pacific Bell's California First plan, San Diego Tribune, 1/1/98

<http://www.newnetworks.com/californiatimeline.htm>

Pacific Telesis 1993 Annual Report

"In November 1993, Pacific Bell announced a capital investment plan totaling \$16 billion over the next seven years to upgrade core network infrastructure and to begin building California's "Communications superhighway". This will be an integrated telecommunications, information and entertainment network providing advanced voice, data and video services. Using a combination of fiber optics and coaxial cable, Pacific Bell expects to provide broadband services to more than 1.5 million homes by the end of 1996, 5 million homes by the end of the decade."

U S West 1993 Annual Report

"In 1993 the company announced its intentions to build a 'broadband', interactive telecommunications network... US West anticipates converting 100,000 access lines to this technology by the end of 1994, and 500,000 access lines annually beginning in 1995.



Ameritech Investor Fact Book, March 1994

"We're building a video network that will extend to six million customers within six years."

Ameritech Annual Report 1993

"We will deliver interactive services to homes and business through our new video network. We've stated our position in interactive services for health care administration, education, government, libraries, travel and commerce, as well as entertainment, games and home shopping."

Ameritech, Ohio Alternate Regulation Plan, September 20, 1994

"21. INFRASTRUCTURE COMMITMENTS The Company's infrastructure commitment in this Plan shall consist of the commitment to deploy, within five years of the effective date of the Plan and within the Company's existing service territory, broadband two-way fully interactive high quality distance learning capabilities to all state chartered high schools including vocational, technical schools, colleges and universities; deploy broadband facilities to all hospitals, libraries, county jails and state, county and federal court buildings..."

Blocking Competition Today and Tomorrow

If you want to do something for broadband, you should talk to the other players in the market who are trying to deliver broadband today.

Your analysis believes that when the Bells are no longer obligated to resell their networks, the companies will still do so because it is in their best interest.

"In doing so, we would need to change our Computer II rules so that incumbent providers would no longer be required to provide underlying transmission services as retail service offerings. Providers nevertheless would have the incentive to provide broadband transport to unaffiliated ISPs on reasonable terms, because only by doing so could they maximize the value of their investments. Such offerings would be made available on a private carriage basis and not as unbundled terrified offerings."

What proof do you have that they will be a benevolent monopoly?

You have not grasped a basic fact. ---- It was the ISPs and CLECs who brought us the Internet, the World Wide Web and broadband, not the Bell or cable companies. These thousands of companies are the innovative engine in the US for technological changes in telecommunications, not the Bell companies --- and



when you put them out of business, you essentially help to slow the growth of broadband and the economy.

For example, Joe Plotkin of Bway.net, an independent ISP in New York, delivered a presentation to the New York City Council which made it clear that "All Broadband is NOT the same" and there are numerous small business applications that the independent provider can offer that neither the Bell companies nor the cable companies offer. To read the presentation go to: <http://www.teletruth.org/docs/PlotkinTestimonyNYCCouncil..pdf>

"The business community especially small-medium size businesses have leveraged high-speed network connectivity in myriad creative ways. Here are just a few examples, from Bwaynet's client base:

- Small law firm -- uses SDSL for Internet access and shared document server with VPN (virtual private network) for secure remote file access.
- Photo stock image house -- On a 768 kbps SDSL circuit, hosts a file server which functions as a self-service e-commerce business.
- NY branch office of European firm -- uses SDSL for videoconferencing over Internet Protocol (IP).
- Home office -- telecommuter, uses ADSL with a static IP address to reach his office network securely.

More to the point, to date the FCC has not properly defended small business rights, especially the ISP and CLEC markets. In fact, the industry has consistently presented data to the FCC to defend the small businesses and it has fallen on deaf ears. Dave Robertson, the current vice president and former chair of the Texas ISP Association, (TISPA) recounted his meeting with Chairman Powell and senior staffers at the FCC Enforcement Bureau.

"The meeting was Tuesday May 8th, 2001. In a nutshell, all the "bad acts" submitted to them to date have resulted in exactly "ZERO" dollars in fines, and little delay in their 271 approvals for the Bells to jump into the long distance market. We asked for something blatant as handwriting on a wall as to the future of the complaint process as we are approaching it. We got it. WE SHOULD EXPECT NOTHING FROM THE INFORMAL COMPLAINT PROCESS. We should expect nothing from any complaints we have submitted to date.

"A couple of weeks ago we met with a senior person in the ENFORCEMENT BUREAU. After a one-hour meeting and receiving some heartfelt empathy for the plight of ISPs and the consumers who are being victimized by the illegal, anti-competitive behavior, I suggested that our best move might be to just jump out a window. He



suggested we might want to consider throwing a chair out of the window first, so we wouldn't get cut on the glass as we jumped."

The Texas ISP Association filed a Petition in September 2001 at the FCC, contending that the current contract with SBC for resale of DSL, (which also affects every SBC state) is based on a predatory pricing model. Worse, the Texas ISP Association submitted 113 complaints to the FCC's enforcement bureau, but they were ignored.

Or take the case of the California ISP Association, CISPA, who has filed complaints with the state commission and filed Comments with the FCC. (CC Docket No. 95-20 , CC Docket No. 98-10, April 16, 2001)
<http://www.cispa.org/fl008.html>

They wrote:

"These comments will describe a variety of methods by which the BOCs' control of infrastructure is being applied to place competing retail ISPs at a disadvantage, to improperly allocate cost from BOC-owned and controlled ISPs to their parent companies, to appropriate customer information from competitors, and to limit the ability of competitors to deliver digital services that extend beyond high-speed Internet access

To make matters worse, the current problems with DSL and Internet services provided by independent ISPs currently is in jeopardy. A recent survey of ISPs by New Networks Institute found that 40% of all DSL orders are NOT going through and that the local monopolies are doing everything in their power to block these companies from surviving. Here's what the ISPs are saying about the Bell companies: <http://www.newnetworks.com/ispownwords.htm>

The harm you are about to inflict on the entire ISP and CLEC markets has also been noticed by other government agencies. For example, the Small Business Administration's Office of Advocacy wrote:

"After reviewing the Commission's proposed rule, the IRFA (Initial Regulatory Flexibility Act Analysis) and comments, Advocacy is concerned the Commission has understated the impact on small ISPs of its tentative conclusion classifying broadband access service as an information service. Classifying broadband access service as an information service would remove the requirements set forth in the Commission's Computer II and Computer III rulemakings that provide carriage to ISPs. Such an action will severely hamper the ability of



small ISPs to provide broadband service, stifling competition and slowing down deployment. Although Advocacy shares the Commission's commitment to deregulation to bolster competition and spur economic growth, in this instance, complete deregulation will create impenetrable barriers to entry, eliminating competition from small businesses and removing consumer choice. "

To read the Ex Parte filing.

http://www.sba.gov/advo/laws/comments/fcc02_0827.html

I would also like to call your attention to the Teletruth filings in all six broadband dockets. Independent of SBA, we found that the FCC was in violation of the Regulatory Flexibility Act's requirement that ALL FCC laws must take into account the impacts the rules will have on small telecom businesses. To read our comments see: <http://www.newnetworks.com/teletruthrfacomments.html>

New Networks Institute also created a Small Business Impact Study, which shows that if the laws go through, it will affect almost every ISP, even if they offer dialup and that these companies would lose \$8 billion dollars and adversely affect 10-15 million customers.

See: <http://www.newnetworks.com/smallbusinessimpactstudy.html>

In Conclusion

You wrote:

"I therefore welcome your reaction, criticism, and suggestions.
Your move."

We strongly suggest you reexamine your analysis using NON-Bell research to learn the Truth about the Bell's history on broadband.

Making the assumption that all will work out if only the FCC gives the Bells more freedoms is not based on any historical record.

We stand ready to answer any questions you might have.

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ⁱ ORDER Re: Verizon Pennsylvania, Inc., Petition and Plan for Alternative Form of Regulation Under Chapter 30 P-00930715 2000 Biennial Update to Network Modernization Plan

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